THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

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WRIT PETITION No.24705 of 2005

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DATED: 06-02-2006

Between:

B.S.S.R.K.Sai babu . . .Petitioner

and

A.P. State Police Housing Corpn. Ltd.,

Hyderabad, and another . . .Respondents

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O R D E R:

The petitioner was selected and appointed as Draftsman-III by the first respondent, in the year 1982. He was regularized in that post with effect from 25-02-1984. Thereafter, he was promoted as Draftsman-I in the year 1989. He was further promoted as Junior Engineer (It is now, renamed as Assistant Engineer) in the year 1991.

The grievance of the petitioner is that even though he became eligible to be promoted as Assistant Engineer in the year 1986 itself, the first respondent has appointed the second respondent herein, on transfer, from a Cooperative Sugar Factory. He states that in the year 1999, a seniority list for the post of Assistant Engineer was published, wherein, the petitioner was shown at Sl.No.46 and the second respondent at Sl.No.14. The petitioner claims to have submitted representations ever since then, for restoration of his seniority and to place him above the second respondent.

This writ petition is filed with a prayer to issue a writ of Mandamus to declare the action of the respondents in not fixing the seniority of the petitioner with effect from 26-11-1986, as illegal, arbitrary and violative of Article 311 of the Constitution of India and for a direction to the first respondent to issue a revised seniority list of Assistant Engineers, counting his service with effect from 26-11-1986.

Learned counsel for the petitioner submits that the petitioner was qualified to be promoted as Assistant Engineer, much before the second respondent was appointed on transfer or absorbed in that post on
26-11-1986. He contends that the first respondent deliberately delayed the promotion of the petitioner up to the year 1991 and thereby, made him junior to

the second respondent. He further contends that the petitioner has been pursuing his remedies all through and till today, no action has been taken thereon.

Learned Standing Counsel for the first respondent, on the other hand, submits that the writ petition is barred by laches and even on merits, the petitioner does not have any case. He contends that mere possession of qualification by the petitioner, by itself, did not enable him to be promoted and that the petitioner did not raise any objection, when the second respondent was appointed or absorbed as Assistant Engineer, in the year 1986.

It is not in dispute that there are three channels for appointment to the post of Assistant Engineer in the first respondent Corporation. They are 1) by direct recruitment 2) by promotion and 3) by transfer. The petitioner is not able to place any material before this Court to demonstrate that either any ratio has been fixed among the three categories or any roster was observed. The first respondent is at liberty to, resort to any of these methods, in the matter of appointment of Assistant Engineers.

The second respondent was appointed on transfer, as Assistant Engineer, way back in 1986. Even assuming that the petitioner was qualified in the year 1986 to be promoted as Assistant Engineer, he can, at the most, have a right to be considered for such promotion, but not a right to be promoted, as such. The first respondent has chosen to appoint the second respondent by transfer from another organization as Assistant Engineer. Had the petitioner entertained any doubt as to the eligibility of the second respondent to be appointed as Assistant Engineer in preference to him, he ought to have raised an objection at the relevant point of time or challenged the same before the appropriate forum.

The petitioner came to be promoted as Assistant Engineer five years subsequent to the promotion of the second respondent. Even at that stage, the petitioner did not claim any relief of appointment with retrospective effect assuming that it was otherwise, permissible. Eight years thereafter, the first respondent published the seniority list in the post of Assistant Engineers. The petitioner was shown at Sl.No.46 and the second respondent at Sl.No.14. In between, there are about 30 individuals. In claiming seniority over the second respondent, the petitioner is indirectly challenging the seniority of the others,

who figured in between and they are not made parties to this petition. At any rate, the writ petition is filed 20 years, after the second respondent was promoted.

Learned counsel for the petitioner placed reliance upon the judgment of the Supreme Court in **JAI RAM SHARMA v. JAMMU DEVELOPMENT AUTHORITY**. That was a case between a regular incumbent and another employee of the same cadre, on deputation. The latter was preferred for promotion. The Supreme Court held that when a regular incumbent is available, the deputationist cannot be preferred. The facts in the instant case are totally different.

Reliance is placed upon the Madras High Court in **M.VISWANATHAN v. GOVT. OF TAMILNADU**. In that case, the delay in promotion of the petitioner, despite existence of vacancy and possession of qualification by the incumbent, was assailed. It does not appear that there were any competing claims between various individuals. The said precedent is not an authority for the proposition that as and when an employee acquires a qualification for promotion, he must be promoted, as a matter of course. Judgments were also cited touching on the permissibility of consideration of cases, even at a belated stage. Twenty years of delay, by any standard cannot be said to be either reasonable or within the permissible limits of consideration.

This Court does not find any basis to grant any relief to the petitioner, at this belated stage. The writ petition is accordingly dismissed. There shall be no order as to costs.

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(L.NARASIMHA REDDY, J)

6th FEBRUARY, 2006.

Note: L.R. Copy be marked.

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